

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:06-HC-2195-BR

| | | |
|-----------------------------|---|--------------|
| UNITED STATES OF AMERICA, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| GRAYDON EARL COMSTOCK, JR., |) | |
| |) | |
| Respondent. |) | |

In its order of 8 November 2011 (D.E. 119), the court allowed respondent's motion to quash the government's amended notice of the *de bene esse* deposition of M. Lela Demby, Ph.D., but directed the parties to confer regarding presentation of Dr. Demby's testimony and, if appropriate, to file a joint or separate motions for appropriate relief. The government has now filed such a motion (D.E. 121). Respondent filed a memorandum in opposition (D.E. 122) and the government filed a reply (D.E. 123). The court heard argument on the motion at the status conference in this and other cases under 18 U.S.C. § 4248 held earlier today.¹

The basis upon which the court quashed the *de bene esse* deposition of Dr. Demby was that it would not provide the court an opportunity to question Dr. Demby. In its motion, the government addresses this concerning by offering to make Dr. Demby available during the second week of the 28 November to 9 December 2011 commitment hearing session before visiting Senior United States District Judge Bernard A. Friedman (after Dr. Demby returns from family travel) to respond to any questions the court may have for her arising from her *de bene esse* deposition. Although respondent

¹ The court advised counsel of its ruling by telephone conference after the hearing, indicating that a written order would follow.

objects to this arrangement, he has not demonstrated that he would be prejudiced by it. Instead, the court finds that the arrangement would provide for the full and fair presentation of Dr. Demby's testimony in an efficient manner consistent with the calendar for the commitment hearing session before Judge Friedman.

A similar circumstance regarding Dr. Demby's testimony is presented in the case of *United States v. Hobart J. Barrett, Jr.*, No. 5:07-HC-2097-FL, which is scheduled for a commitment hearing the first week of Judge Friedman's session, as is this case. The court intends, as the government proposes, that the requirements adopted in this order apply in *Barrett* as well, absent objection by the respondent in that case. The court is entering an appropriate order in *Barrett*, but to facilitate notice of the court's ruling in this case to respondent's counsel in *Barrett*, it will direct that a copy of this order be served on him.

IT IS THEREFORE ORDERED as follows:

1. The government's motion (D.E. 121) is ALLOWED.
2. The *de bene esse* deposition of Dr. Demby shall be taken prior to the 28 November to 9 December 2011 commitment hearing session.
3. The *de bene esse* deposition of Dr. Demby shall be video recorded and transcribed. The government shall submit to the court no later than 28 November 2011 a copy of the video recording of the deposition in electronic form and the transcript of the deposition.
4. The provisions of this order supersede any contrary provisions in the 8 November 2011 order (D.E. 119).
5. Promptly after entry of this order, the Clerk is DIRECTED to email a copy of it to Lewis A. Thompson, III, counsel for respondent in *Barrett*.

SO ORDERED, this 10th day of November 2011.



James E. Gates
United States Magistrate Judge